

**RESOLUTION NO. 2020-42**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT WITH KCI TECHNOLOGIES, INC. FOR CONSTRUCTION, ENGINEERING, AND INSPECTION (CEI) SERVICES FOR THE SAFE ROUTES TO SCHOOL (SRTS) PROJECT IN AN AMOUNT NOT TO EXCEED \$180,000; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (“Village”) issued solicitation number 2020-43 for professional services relating to construction, engineering and inspection services (the “Services”) for the Safe Routes to School Key Biscayne K-8 Center Project; and

**WHEREAS**, on May 7, 2020, an Evaluation Committee appointed by the Village Manager short listed firms and ranked KCI Technologies, Inc. (the “Consultant”) as the most qualified firm for the Services; and

**WHEREAS**, on May 19, 2020, the Village Council adopted Resolution No. 2020-30 selecting Consultant to provide the Services and authorizing the Village Manager to negotiate and execute an agreement with the Consultant; and

**WHEREAS**, the Village Manager has negotiated the agreement attached hereto as Exhibit “A” (the “Agreement”) with the Consultant for the Services and the Village Council desires to approve the Agreement; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2.**     **Approval.** That the Village Council hereby approves the Agreement with the Consultant for the Services.

**Section 3.**     **Authorization.** That the Village Council hereby authorizes the Village Manager to execute the Agreement with the Consultant, in substantially the form attached hereto as composite Exhibit "A," subject to the final approval of the Village Attorney as to form, content, and legal sufficiency, and to expend budgeted funds in an amount not to exceed \$180,000.

**Section 4.**     **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 30th day of June, 2020.

ATTEST:

  
PETER J. KULPA  
INTERIM VILLAGE CLERK



  
MICHAEL W. DAVEY, MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
VILLAGE ATTORNEY

PROFESSIONAL SERVICES AGREEMENT



VILLAGE OF KEY BISCAYNE

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSTRUCTION, ENGINEERING AND  
INSPECTION (CEI) SERVICES**

**RFP No. 2020-43**

**VILLAGE OF KEY BISCAYNE  
SAFE ROUTES TO SCHOOL  
KEY BISCAYNE K-8 CENTER**

<b>LAP PROGRAM AGREEMENT REFERENCE</b>
Agreement Date: July 1, 2020
Contract No. 2020-43
Local Agency Vendor No. VF650291811-011
FM: 438162-1
Federal ID: D619-061-B
County: 87 (Miami-Dade)

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE VILLAGE OF KEY BISCAYNE  
AND  
KCI TECHNOLOGIES, INC.**

**THIS AGREEMENT** (this "Agreement" or "Contract") is made effective as of the 3<sup>rd</sup> day of August, 2020 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the "Village"), and **KCI TECHNOLOGIES, INC.**, a Florida for-profit corporation, whose address is 4041 Crescent Park Drive, Tampa, Florida 33578 (hereinafter, the "Consultant").

**WHEREAS**, on March 19, 2020, the Village issued Request for Proposals No. 2020-43 ("RFP") for construction engineering and inspection (CEI) – Under the Florida Department of Transportation's ("Department") Local Agency Program ("LAP") for which Respondents shall be prequalified by the Department ("Services"); and

**WHEREAS**, in response to the RFP, on April 20, 2020, the Consultant submitted a proposal ("Proposal"), which is incorporated and attached hereto as part of Exhibit "A," Scope of Services and was thereafter awarded a contract; and

**WHEREAS**, the Consultant and Village, through mutual negotiation, have agreed upon a rate schedule as set forth in Exhibit "B" (the "Rate Schedule") in connection with the Services; and

**WHEREAS**, the Village desires to engage the Consultant to perform the Services and provide the deliverables as specified below, all in accordance with the Department's LAP Manual, Section 287.055, Florida Statutes, 23 CFR 172, the Federal Brooks Act (40 USC 1101-1104) and all other applicable Federal, State and Local regulations, including the LAP Manual forms incorporated and attached hereto as part of Exhibit "C".

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Village agree as follows:

**1. Scope of Services.**

- 1.1.** The Consultant shall furnish the Services and provide deliverables for the Project, as requested by the Village and detailed in **Exhibit A**. This is not a general services or umbrella type contract; the scope of Services is limited to one phase consisting of the CEI Services for the Safe Routes to School Project. The Services are to be restricted, as applicable, as the estimated construction cost does not exceed \$2 million.
- 1.2.** Prior to commencement of Services, the Consultant will provide the Village with a list of personnel and their corresponding hourly rates for the Services set forth in **Exhibit A** to be set forth on the Rate Schedule attached hereto as **Exhibit B**.
- 1.3.** If the Village approves the Rate Schedule for the Project, the Village will provide the Consultant with a Notice to Proceed to perform the Services set forth in **Exhibit A**. Consultant acknowledges that it shall not undertake to perform any Services on the Project until it has received from the Village the Notice to Proceed on such Project.
- 1.4.** General Provisions for the Scope of Services are set forth in **Exhibit A**.

1.5. Consultant shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables") to the Village.

1.6. The Consultant shall abide by the terms and requirements of the RFP, as though fully set forth herein. Furthermore, in the event any requirements of the RFP, including the laws, regulations and ordinances incorporated therein, appear to be in conflict, the Consultant shall be required to follow the most restrictive requirements.

**2. Term/Commencement Date.**

2.1. This Contract shall become effective upon the Effective Date and shall remain in effect through January 8, 2021, unless earlier terminated in accordance with Paragraph 8. Additionally, the Village Manager may extend this Contract in accordance with its LAP Agreement with the Department. The Contract shall not exceed a total of 5 years.

2.2. Consultant agrees that time is of the essence and Consultant shall complete the Services within the timeframes set forth in the Notice to Proceed for the Project in the manner provided in this Agreement, unless extended by the Village Manager.

2.3. Notices to Proceed will not be issued to Consultant until the Village has received Federal Highway Administration (FHWA) authorization and a Notice to Proceed from the Department for the Project.

**3. Compensation and Payment.**

3.1. Compensation for Services provided by Consultant shall be in accordance with the detailed Compensation and Payment Method Rate Schedule attached hereto as **Exhibit B** that provides for reimbursement based on direct labor hours at specified hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an estimated not to exceed total sum for Consultant's Services that shall be included as part of the Notice to Proceed, which total sum for Consultant's Services shall not be exceeded without prior written authorization of the Village.

3.2. Unless otherwise specifically provided in **Exhibit B, Compensation and Payments**, Consultant's invoice shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Village require one to be performed. The Consultant's invoice must be a "Proper Invoice" as defined by Section 218.72, Florida Statutes. If Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. Invoicing shall be submitted on a monthly basis.

3.3. During the Project, Consultant shall deliver an invoice to Village no more often than once per month detailing Services completed and the amount due to Consultant under the Statement of Work for such Project. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the detailed description of Services rendered during that month for each Project. Additionally, a determination of allowable costs in accordance with the Federal cost principles will be performed for Services rendered under this Agreement. The Village shall pay the Consultant in accordance with the Florida Prompt Payment Act, Florida Statutes Chapter 218, Part VII after approval and acceptance of the Services by the Village Manager.

**4. Subcontractors/Subconsultants.**

- 4.1. The Consultant shall be responsible for all payments to any subcontractors and subconsultants and shall maintain responsibility for all of their work related to the Services for the Project.
- 4.2. Contractor may only utilize the services of a particular subcontractor/subconsultant with the prior written approval of the Village Manager, which approval shall be granted or withheld in the Village Manager's sole and absolute discretion.

**5. Village's Responsibilities.**

- 5.1. Village shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Village, and provide criteria requested by Consultant to assist Consultant in performing the Services.
- 5.2. Upon Consultant's request, Village shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

**6. Contractor's Responsibilities; Representations and Warranties.**

- 6.1. The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for each Project as is ordinarily provided by a Consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Village requests, the Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.
- 6.2. The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for the Village as an independent contractor of the Village. Consultant further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.
- 6.3. The Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

**7. Conflict of Interest.**

- 7.1. To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village.
- 7.2. No member, officer or employee of the Consultant or of the Village during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds

thereof. This provision shall also be included in each of Consultant's subcontracts for this Project.

- 7.3. The contracting requirements regarding conflicts of interest as specified in 23 CFR 1.33 and the requirements of 23 CFR 172.7(b)(4) are incorporated into this Agreement by this reference.

#### **8. Termination.**

8.1. The Village Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Consultant. The Village Manager may terminate this Agreement immediately with cause.

8.2. Upon receipt of the Village's written notice of termination, Consultant shall immediately stop work on the Project unless directed otherwise by the Village Manager.

8.3. In the event of termination by the Village, without cause, the Consultant shall be paid for all Services accepted by the Village Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4. The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the Project to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

8.5 If in the opinion of the Village, the Consultant refuses to execute contractual obligations as outlined in the Contract, produces an unsatisfactory performance, or neglects or refuses to address the deficit to provide a suitable resolution that meets the Village's expectations, then the Village may notify the Consultant that the Village will terminate the Contract for cause. If at any time the Village is of the opinion that service delivery is unnecessarily delayed and will not be completed within the prescribed time, then Village may notify the Consultant to discontinue all Services under the Contract. Consultant shall immediately respect said notice and cease said Services and shall forfeit the Contract. The Village may there-upon look to the next responsive and responsible Respondent to complete the Work or re-advertise for Responses and let a contract for the uncompleted Work in the same manner as was followed in the letting of the Contract and charge the cost thereof to the Consultant under this Contract. Any excess cost arising over and above the estimated total sum of the Contract shall be charged to the Consultant.

#### **9. Insurance.**

9.1. Consultant shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village and the Department as an Additional Insured on all policies so allowable, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents, and volunteers naming the Village and the Department as additional insureds. Any insurance maintained by the Village shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village, as it deems necessary or prudent.

9.1.1. Commercial General Liability coverage with limits of liability of not less than: for combined bodily injury, \$200,000 per person and \$300,000 per occurrence and for property damage, \$300,000 per occurrence. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$1,000,000 each.

9.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

9.1.3. Business Automobile Liability with minimum limits of \$300,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.1.4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

**9.2. Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village and the Department, each as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village and Department prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village and Department both reserve the right to inspect and return a certified copy of such policies, upon written request by the Village or Department. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village and Department before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village and Department.

**9.3. Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village and Department are both to be specifically included as an Additional Insureds for the liability of the Village or Department resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

**9.4. Loss Payee.** The Village and Department are to be specifically named as loss payees under the Consultant's Professional Insurance policy so that the Village and Department will be a third party beneficiary entitled to receive all money payable under the relevant policy for any claims, damages, or losses in connection with, related to, or arising from Consultant's Services or performance pursuant to this Agreement.

**9.5. Deductibles.** All deductibles must be declared to and be reasonably approved by the Village and Department. The Consultant shall be responsible for the payment of any deductible in the event of any claim. Self-insured retention is not allowed for this Project.

**9.6.** The provisions of this section shall survive termination of this Agreement.



10. **Nondiscrimination.** During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

11. **Attorney's Fees and Waiver of Jury Trial.**

11.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. **Indemnification.**

12.1. To the extent provided by law, Consultant shall defend, indemnify and hold harmless the Village and the State of Florida, Department of Transportation, including their officers, agents, and employees against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of the Consultant or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Consultant hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

12.2. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Consultant to indemnify Village for the negligent acts or omissions of Village, its officers, agents or employees or third parties. Nor shall the same be construed to constitute agreement by Consultant to indemnify State of Florida, Department of Transportation for the negligent acts or omissions of the Department, its officers, agents or employees or third parties. This indemnification shall survive the termination of this Contract.

12.3. In any and all claims against the Village, the State of Florida, Department of Transportation, or any of their contractors, agents, officers or employees by any employee of Consultant, any subcontractor/subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Services or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any such subcontractor/subconsultant or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

12.4. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.08 (Chapter 725).

12.5. Nothing herein is intended to serve as a waiver of sovereign immunity by the Village and Department nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village and

Department are subject to section 768.28, Florida Statutes, as may be amended from time to time.

**12.6.** The provisions of this section shall survive termination of this Agreement.

**13. Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

**14. Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

**15. Entire Agreement/Modification/Amendment.**

**15.1.** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

**15.2.** No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**16. Ownership and Access to Records and Audits.**

**16.1.** Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement ("Work Product") belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

**16.2.** Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. The Village Manager or her designee shall, during the term of this Agreement and for a period of five (5) years from the date of final payment under this Agreement, have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and for up to 5 years following completion of the Agreement until the records are transferred to the Village.

**16.3.** Upon request from the Village's custodian of public records, Consultant shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- 16.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6. Any compensation due to Consultant shall be withheld until all records are received as provided herein.
- 16.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.
17. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

**Custodian of Records:** Peter J. Kulpa, Interim Village Clerk  
**Mailing address:** 88 West McIntyre Street  
Key Biscayne, FL 33149  
**Telephone number:** 305-365-5506  
**Email:** [pkulpa@keybiscayne.fl.gov](mailto:pkulpa@keybiscayne.fl.gov)

18. **Nonassignability.** This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.
19. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
20. **Independent Contractor.** The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
21. **Compliance with Laws.** The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and

in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

22. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
23. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
24. **Prohibition of Contingency Fees.** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
25. **Public Entity Crimes Affidavit.** Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
26. **Cooperation With The Inspector General.** Consultant shall comply with Section 20.055(5), Florida Statutes.
27. **Consultant Errors and Omissions.** Consultant shall be responsible for technically deficient designs, reports, or studies due to Consultant's errors and omissions, and shall promptly correct or replace all such deficient Services without cost to the Village. The Consultant shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the Village for Services performed does not constitute a waiver of this representation.
28. **Public Records.** Florida law provides that municipal records should be open for inspection by any person under Chapter 119, F.S. Public Records law. All information and materials received by the Village in connection with responses shall become property of the Village and shall be deemed to be public records subject to public inspection.
29. **Consultant Performance Evaluation.** At the end of the contract, the Consultant will receive a performance evaluation from the Village based on the Department's evaluation of the Project.

[Remainder of page intentionally left blank. Signature pages follow.]

